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REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

KEY PROVISIONS OF PROPOSITION 208
AND ITS EFFECT ON LOCAL CAMPAIGNS,
ELECTIONS AND LOBBYING

Proposition 208, entitled "California Political Reform Act of 1996", was adopted by California voters at the November 5, 1996, election. It becomes effective January 1, 1997. It makes major changes in campaign financing and lobbying laws. It will affect not only state but also municipal elections and lobbying practices.

This report is intended to highlight key features of the proposition, particularly as it affects The City of San Diego. For purposes of this report, the proposition is assumed to be valid. The City Attorney is aware, however, that there is great debate underway statewide whether all or part of it passes constitutional muster and that there is bound to be litigation over the next few years to determine its validity. This report does not opine on the constitutional issues raised. The City Attorney will keep you informed of the results of litigation in this area.

To assist you in understanding how this new law will affect elections, campaign financing and lobbying law statewide, attached is a chart prepared by the Fair Political Practices Commission (FPPC) comparing current and new state law.

I. Contribution Limits

With exceptions for "small contributor committees" and "political party committees," in local elections where the candidate is from a district with fewer than 100,000 residents, it is unlawful for any person to make, and unlawful for any candidate to accept, more than \$100 per election. New Gov't Code § 85301(a). Since all of San Diego's Council Districts have more than 100,000 residents, this provision does not apply to this City.

Again with exceptions for "small contributor committees" and "political party

committees", in local elections where the candidate is from a district with 100,000 or more residents, a candidate is prohibited from accepting more than \$250 per contributor per election. New Gov't Code § 85301(a). Current San Diego law already limits the amount an individual can contribute per election to \$250, irrespective of the number of residents per Council District. San Diego Municipal Code (SDMC) § 27.2941(a). San Diego's laws would outright prohibit "small contributor committees" and "political party committees" from contributing to a San Diego campaign, because they are organizations. SDMC § 27.2947. This new Government Code section, however, purports to allow "small contributor committees" and "political party committees," as those terms are defined in new Government Code sections 85203 and 85205, to contribute to San Diego candidate campaigns. But new Government Code section 85706 states that nothing in Proposition 208 may nullify more stringent local campaign contribution limits, such as those San Diego currently has in effect.

II. Limits on Time When Campaign Fundraising May Take Place:

A. Pre-election Fundraising

"In districts of fewer than 1,000,000 residents," it is unlawful for candidates or candidates' controlled committees to accept campaign contributions more than six months before any primary or special primary election in which the candidates are running. New Gov't Code § 85305(a). The phrase "in districts of fewer than 1,000,000 residents" is not defined in that section or elsewhere in the proposition. Presumably, it would include San Diego City Council districts, because they each contain fewer than 1,000,000 residents. City laws contain no similar time limits on campaign fundraising.

"In districts of 1,000,000 or more residents," it is unlawful for candidates or candidates' controlled committees to accept a campaign contribution more than 12 months before any primary or special primary election in which they running. New Gov't Code § 85305(b). Again, the phrase "in districts of 1,000,000 or more residents" is not defined in this section or elsewhere in the proposition. Since this City has more than 1,000,000 residents, however, presumably this section would govern Citywide elections.

B. Post-election Fundraising

New Government Code section 85305(c) prohibits candidates or controlled committees from accepting contributions more than 90 days after an election or after the candidates' withdrawal from the race. Contributions accepted during this 90-day period must be used only to pay outstanding campaign debts or bills. By its own terms, this section does not apply to elections that took place before January 1, 1997. City laws have no similar prohibition on fundraising after an election, however, City laws require all campaign debts for goods and services

provided to the campaign to be paid within 90 days after an election. SDMC § 27.2945.

III. Prohibition Against Transfer of Monies from One Candidate to Another

New Government Code section 85306 prohibits a candidate, or a candidate or officeholder's controlled committee, from transferring campaign monies to another candidate. Although this City has no equivalent provision in its campaign finance laws, this kind of transfer would be limited by the City's \$250 per election contribution limit by individuals and the City's outright prohibition on contributions to candidates by organizations.

IV. Loans

A. Loans Considered Contributions

New Government Code section 87303(a) declares loans to be contributions from the maker and guarantor, if any, and makes loans subject to contribution limitations. San Diego's laws have long defined "contribution" to include loans and makes loans to candidates subject to its contribution limits and prohibitions. SDMC §§ 27.2903(e)(1)(ii); 27.2941; 27.2942; and 27.2947.

B. Extensions of Credit

New Government Code section 85307(b) declares that extensions of credit of more than 30 days, other than loans from financial institutions, are subject to the state's campaign contribution limits. San Diego laws are similar. Under San Diego's law, extensions of credit are essentially loans that are subject to the contribution limits, unless paid off within 90 days. SDMC §§ 27.2903(e)(1)(ii); and 27.2945(d).

C. Limit on Loans Candidate Makes to Own Campaign

New Government Code section 87307(c) prohibits a candidate in a local race from loaning his or her own campaign more than \$20,000 at any one time. The City's laws contain no similar limit on candidates' loans to their own campaigns. SDMC § 27.2941(c). Both new section 87307(c) and City laws permit a candidate to make unlimited contributions to his or her own campaign.

V. Organizational Contributions

New Government Code section 85311 declares that all payments made by any business entity, labor organization, association, political party, or group of persons is considered to be

made by a single person. In San Diego organizational contributions are prohibited entirely. SDMC §27.2947.

VI. Officeholder Accounts

A. \$10,000 per Calendar Year Cap on Officeholder Accounts

New Government Code section 85313 permits state and local elected officeholders to establish one segregated officeholder expense fund for expenses related to the office they hold. It places a cap of \$10,000 on aggregate contributions to that account within any calendar year. The City's laws do not specifically allow or prohibit officeholder accounts. However, since their adoption, the City's campaign finance laws have consistently been interpreted to allow excess campaign moneys to be retained in open campaign accounts and to be used for officeholder expenses. Under Proposition 208, separate officeholder accounts will be permitted in San Diego. The extent to which Proposition 208 affects the City's treatment of campaign accounts being used for officeholder expenses is the subject of a separate City Attorney Memorandum of Law being issued simultaneously with this report.

B. Campaign Expenditures from Officeholder Account Prohibited

Expenditures from an officeholder account for candidate or ballot measure campaigns are prohibited. New Gov't Code § 85313(a). City laws would allow such expenditures.

C. Maximum Contributions to Officeholder Account Set at \$250 per Person

New Government Code section 85313(b) allows persons to make, and officeholders to receive, a maximum contribution to an officeholder account of \$250 per calendar year. This is over and above any contribution by that person to a candidate's campaign. Under section 85313(b), contributions to officeholder accounts are not considered campaign contributions. However, under Section 85313(d) all expenditures from, and contributions to, an officeholder account are subject to the campaign disclosure and reporting requirements in the Political Reform Act.

D. Contributions From, Through, or Arranged by, Lobbyists to Officeholder Accounts Prohibited

Contributions from, through, or arranged by, registered local lobbyists to officeholder accounts are prohibited. Gov't Code §85313(c). Current City law permits individual lobbyists, but not lobbying organizations or entities, to make contributions to any open campaign account that is used for officeholder expenses, subject to the City's contribution limits. SDMC §§

27.2941; 27.2947.

VII. Voluntary Spending Limits

A. Local Governments Permitted to Adopt Laws Establishing Voluntary Spending Limits

New Government Code section 85400(c) expressly permits, but does not require, local governments to establish voluntary expenditure ceilings for candidates and their controlled committees not to exceed one dollar per resident for each election in the district in which the candidate is seeking elective office. This section also states that local governments may establish lower level expenditure ceilings than permitted by this section. The City's current laws contain no voluntary expenditure ceilings.

B. Designation in Local Ballot Pamphlet of Those Who Agreed to Spending Limit

New Government Code section 85602 provides that, if a candidate for a local government office voluntarily accepts spending limits (presumably pursuant to a local voluntary spending limit law adopted under authority of new Government Code section 87400(c)), then the name of that candidate is to be "prominently designated" in the ballot and ballot pamphlet. The City's laws have no similar provision.

VIII. Independent Expenditures

New Government Code section 85500(b) prohibits an independent expenditure committee that spends \$1000 or more supporting or opposing a candidate from accepting a contribution in excess of \$250 per election. The City's laws operate similarly. SDMC § 27.2941(a).

New Section 85500(c) declares that any contributor who contributes \$100 or more to a candidate is prohibited from making independent expenditures or other contributions in support of that candidate, or in opposition to that candidate's opponents, which in combination exceed the statute's contribution limits (\$100 for districts with fewer than 100,000 residents; \$250 in districts with more than 100,000 residents). The City Attorney has opined that, at least in a two-candidate race, the City's laws prohibit an individual who contributed the maximum of \$250 to a candidate from contributing to any other individual or committee making independent expenditures in support of that candidate, or in opposition to that candidate's opponent. San Diego City Attorney Memorandum of Law, June 10, 1992.

IX. Deposits into Campaign Account Prohibited Unless Identifying Information on File

New Government Code section 85700 prohibits a contribution of \$100 or more from being deposited into a campaign checking account, unless the name, address, occupation and employer of the contributor is on file in the recipient's records. The City already has a similar provision. SDMC § 27.2921.

X. Contributions to Campaigns or Officeholder Accounts From, Through or Arranged by, a Local Lobbyist Prohibited

New Government Code section 85704 prohibits a candidate, candidate's controlled committee or officeholder from soliciting or accepting a campaign contribution or contribution to a campaign or officeholder account from, through, or arranged by, a registered local lobbyist. This section and new government Code section 85313(c) overlap to the extent that they prohibit lobbyist contributions to officeholder accounts. New sections 85313 (c) and 85704, although redundant, are consistent. Interestingly, both current and new Government Code section 82039 defines the term "lobbyist" to include only those who lobby the state. Nonetheless, section 85704 clearly refers to "local lobbyists." Current City laws permit an individual lobbyist, but not lobbyists who are organizations, to contribute up to \$250 per election to campaigns. SDMC §§ 27.2941; 27.2947.

XI. Contributions by Appointed Board or Commission Members Prohibited

New Government Code Section 87505 prohibits appointed members of public boards or commissions from contributing to, or soliciting for, any candidate who was responsible for their appointment. Current City laws permit individuals, including members of City boards and commissions, to contribute to any candidate for City election. SDMC § 27.2941.

XII. Cities' Ability to Adopt More Stringent Disclosure and Contribution Laws

New Government Code section 85706 expressly permits local permits local governments to have more stringent disclosure or contribution limits. It also requires a vote of the local electorate if the jurisdiction wants to impose higher contribution or expenditure limitations.

XIII. Administrative Penalty Increased

Amended Government Code section 83116 increases the administrative penalty the Fair Political Practices Commission (FPPC) may impose from \$2000 to \$5000.

XIV. Concurrent Jurisdiction to Prosecute Criminal Provisions Granted to FPPC

Amended Government Code section 91000(d) grants concurrent jurisdiction to the FPPC to prosecute misdemeanor provisions of the Political Reform Act.

XV. Aiding and Abetting

Amended Government Code sections 91004 and 91006 provide that anyone who aids and abets another person, even negligently, to violate the Political Reform Act, may be liable under the Act.

The City's laws are similar. San Diego Municipal Code section 27.2971 states that "any person who counsels, aids, abets, advises, or participates with another" in violating the City's campaign finance laws commits a misdemeanor.

XVI. Surplus Campaign Funds

New Government code section 89519 redefines "surplus" campaign funds to include any excess funds left over after a campaign, whether successful or not. Under current section 89519, "surplus" campaign funds are only those excess funds for a candidate who was defeated or an officeholder who has left office. New Section 89519 requires surplus campaign funds to be distributed within 90 days after withdrawal, defeat or election to office, and it specifies the manner in which the distribution must be done: (1) except within 60 days of a successful general election campaign, up to \$10,000 may be placed in an officeholder account; and, (2) any remaining surplus funds are required to be distributed to any political party, returned to contributors on a pro rata basis, or turned over to the (presumably local government's) General Fund.

Report to the Honorable Mayor
and City Council

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December 16, 1996

SUMMARY

This report highlights some of the key features of Proposition 208 and how they may affect this City's laws. It is not designed to be a comprehensive analysis of this major legislation and we anticipate that you will have several questions about how this new law will affect the City. We remain ready to answer specific questions as you bring them to us.

Respectfully submitted,

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